Reserved Judgment

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Civil Writ Petition No. 834 of 2001 (S/S)

Shiv Dutt Kholia
Gufa Mahadev, Tallital
Nainital. …….. Petitioner

Versus

State of Uttaranchal
Through Secretary Local Self Government
Secretariat, Dehradun
And others …… Respondents

Mr. J.C. Pandey, learned counsel for the petitioner.
Mr. N.C. Gupta, learned Standing Counsel for the respondent No. 1 & 2.
Mr. Sharad Sharma, learned Counsel for respondent No. 3.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus directing the respondents No. 3 to pay the post retiremental benefits due to him.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner got retired on attaining the age of superannuation on 30.4.99 from the post of Nayab Tax Moharir in Nagar Palika Parishad, Nainiatl after rendering about 40 years of satisfactory service with said Nagar Palika. The petitioner is entitled to the retiremental benefits as per the provisions of U.P. Nagar Palika Non Centralized Service (Retirement benefits) Regulations, 1984. it is further alleged that petitioner submitted his necessary papers for pension etc. to respondent No. 2. In response to submission of the papers, respondent No. 2 vide letter dated 10.6.99 (copy Annesure-2 to the writ petition) sanctioned the pension and gratuity payable to the petitioner. But when the petitioner moved to Nagar Palika Parihad, Nainital on 22.04.2000 in pursuance of said letter, it

failed to yield any result. Consequently, the petitioner sent a letter to Commissioner, Kumaon Division on which vide letter 23.10.04 (copy Annexure-6 to writ petition), Additional Commissioner, Kumaon Division directed respondent No. 3 i.e. Executive Officer, Nagar Palika Parishad, Nainital to make the necessary payment to the petitioner. However, the petitioner is still waiting for clearance of his dues and when the Nagar Palika Parishad. Nainital failed to respondent even after notice dated 01.12.2000 (copy Annexure- 7 to the writ petition), this writ petition is moved before this court.

3) A counter affidavit has been filed on behalf of the respondent No. 3 in which the facts as to the retirement of the petitioner and entitlement to pensionary benefits as per the provisions of U.P. Nagar Palika Non Centralized Services (retirement benefits) are not disputed. It is stated in the Counter Affidavit that the petitioner after his retirement on 30.04.99, failed to vacate the official accommodation allotted to him, as such the answering respondent had no option but to deduct panel rent from the post retiremental benefits payable to the petitioner. It is further stated in the Counter affidavit that the petitioner is now being paid pension from time to time. In para 11 of the counter affidavit, it has been stated that total Rs. 64,061.30 has already been paid to the petitioner by March 2003 and remaining sum could not be paid on account of poor financial condition of the Nagar Palika.

4) In the Rejoinder affidavit the petitioner has stated that now in November, 2001 he has vacated the official accommodation occupied by him but still the unpaid dues relating to his pensionary benefits are yet to be cleared by the respondent. However, he has admitted that so far he has received Rs. 1,80,061/- towards the post retiremental benefits including the pension, gratuity and provident fund till January, 2004 but still all the dues do not stand cleared.

5) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

6) The short question for consideration before this Court is whether, the respondents have failed to clear the dues relating to pensionary benefits payable to the petitioner.

7) Admittedly the petitioner got retired on 30.04.99 from the post of Nayab Tax Moharir from Nagar Palika Parishad, Nainital and he was entitled to pensionary benefits under U.P. Nagar Palika Non Centralized Service (Retiremental Benefits) Regulations, 1984. It is also admitted that during the pendency of this writ petition now most part of the retiremenatal benefits have already been cleared as stated in Para 11 of the counter affidavit of the respondent No. 3 that the petitioner has been paid a sum amounting to Rs. 64,061.30/- by March 2003 and in the rejoinder affidavit the petitioner himself has admitted in its para 7 that by January 2004, total amount of Rs. 1,08,061/- has been paid but it is alleged that still all dues are not cleared. However, the petitioner has failed to disclose as to what is the exact amount now outstanding and payable to the petitioner. During argument learned counsel for the petitioner submitted that on the outstanding amount he should be paid interest for delay in the payment of the dues yet to be cleared. Considering the facts particularly the fact that the respondent No. 3 has already cleared major amount of the post retiremental benefits to the petitioner, as such in the opinion of this court, it is not desirable to impose interest on the sum outstanding more so when the petitioner has not disclosed the exact amount now required to be paid. During argument learned counsel for the petitioner submitted that some amount to the tune of about Rs. 9,000/- is yet to be paid by the petitioner but he failed to

disclose the exact amount payable. Now the pension is being paid every month to the petitioner. In the circumstances the writ petition deserve to be disposed of with the observation that if any amount relating to gratuity and provident fund now outstanding shall be cleared within a period of three months.

8) Accordingly, the writ petition is disposed of with the observation that if any amount relating to gratuity or provident fund still outstanding and required to be paid to the petitioner, the same be cleared by the respondent No. 3 within a period of three months. No order as to costs.

(P.C. Pant, J)

Dt: October 13, 2004

Sweta